

BEFORE THE COMMISSIONER OF COMMERCE & INSURANCE
STATE OF TENNESSEE

IN THE MATTER OF:)	
)	
TENNESSEE COORDINATED CARE)	
NETWORK, d.b.a. ACCESS MED...PLUS)	
)	
A Tennessee non-profit health)	Docket No. AS-00-TCCN
Maintenance organization)	
210 Athens Way, Metro Center)	
Nashville, TN 37228-1308)	

NOTICE OF ADMINISTRATIVE SUPERVISION

NOTIFICATION

Pursuant to the provisions of Tenn. Code Ann. Title 56, Chapter 32, Part 2 and Chapter 9, Part 5, the Commissioner of Commerce and Insurance issues this notification of administrative supervision to Tennessee Coordinated Care Network. This Notice of Administrative Supervision ("Notice") and the provisions thereof are governed by Tenn. Code Ann. §§ 56-9-501 *et seq.*, § 56-32-217 and Chapter 0780-1-66 of the Rules and Regulations of the Department of Commerce and Insurance.

JURISDICTION

1. The Tennessee Health Maintenance Act of 1986, as amended, Tenn. Code Ann. Title 56, Chapter 32, Part 2 (hereinafter referred to as the "HMO Act") provides for the regulation and licensure of health maintenance organizations in this state. Under the provisions of that part, the Commissioner of Commerce and Insurance is charged with the administration of the HMO Act. The Department of Commerce and Insurance, TennCare Division is her authorized agent for the administration of the HMO Act as it applies to health maintenance organizations who participate in the Tennessee Medicaid demonstration project, hereinafter referred to as the TennCare Program.

FINDINGS OF FACT

2. Tennessee Coordinated Care Network (formerly Tennessee Managed Care Network, (hereinafter "TCCN" or "the HMO") , doing business as Access Med...Plus, is a Tennessee non-profit corporation holding a certificate of authority as a health maintenance organization from the Department of Commerce and Insurance pursuant to Tennessee Code Annotated Title 56, Chapter 32. TCCN participates in the TennCare program.

3. TCCN does not have any employees and, therefore, TCCN has entered into a management agreement with Medical Care Management Company ("MCMC" or "Management Company"), a Tennessee for-profit corporation, to provide all management services needed by the TCCN TennCare Program line of business. Management staff services for MCMC are provided, in significant part, by Access Health Systems, Inc. ("AHS"), a Delaware for-profit corporation, registered with the Tennessee Secretary of State to do business in Tennessee.

4. AHS employees constitute the management staff responsible for directing and operating the TennCare Program line of business for TCCN. The AHS management employees who provide the management services for TCCN's TennCare Program line of business include, but are not limited to: Anthony J. Cebrun, JD, MPH, AHS President and CEO; Joseph Barber, CPA, AHS Chief Financial Officer; D.R. (Rex) Edmonds, CPA, Controller; Susan Short Jones, AHS corporate counsel, AHS Vice President Steve Reed; and Marlene Reedy, AHS Chief Information Officer.

5. On March 6, 2000, Anne B. Pope, Commissioner of Commerce and Insurance issued an agreed Letter of Examination to TCCN, d.b.a. Access Med...Plus in response to concerns regarding the claims processing system operation of TCCN, including information received about failure to pay claims for medical services rendered. Pursuant to that Letter of Examination, the Commissioner's examiners and agents conducted an on site examination of TCCN. As a result of that examination, the Commissioner's examiners and agents issued reports to the Department of Commerce and Insurance. Such reports contain adverse findings. These findings include but are not limited to the following:

- a) TCCN's adjudication of claims fails to meet the requirements of Tenn. Code Ann. Section 56-32-226(b)(1) in that mail room

testing determined a significant number of claims could not be found on TCCN's claims processing system, a significant number of claims were incorrectly adjudicated, and a number of claims indicated duplicated payments for the same claim.

- b) TCCN's claims processing system is unable to determine if a member is Medicare eligible unless the enrollee is over 65. This could lead to substantial overpayments.
- c) TCCN's claims processing system is unable to correctly pay claims for transportation, obstetrics and gynecology, and anesthesia.
- d) Outpatient claims are overpaid due to the failure of the claims system to correctly apply the appropriate pricing methodology.
- e) TCCN has no statistics available for such key performance measures as financial accuracy, payment accuracy, or procedural accuracy, which TCCN has acknowledged.
- f) Many records have not been loaded into the regular claims files, but experienced load problems and were placed into a "critical errors" file. These claims are never loaded into the claims system, but are placed on an "error" report that identifies various edits the claim hits that prevent the claim to be uploaded into the MC/400 system.
- g) TCCN's claims processing system is inappropriately denying claims for "authorization is closed" when the medical provider has properly obtained a prior authorization from TCCN.
- h) Problems with the production of checks and remittance advices led to claims being paid to the wrong providers. These system problems caused TCCN to pay the wrong providers, leaving the providers who should have been paid with negative remittance advice (RA) balances.

- i) TCCN's MC/400 system was not able to consistently distinguish between covered vs. excluded benefits, leading to mispaid claims.
- j) Fee schedule problems led to a significant number of claim lines with \$0.00 allowable amounts.
- k) TCCN has remitted "advance payments" to providers totaling Sixteen Million, Four Hundred Sixty-five Thousand, Fifty-Two dollars (\$16,465,052.00) for the period December 20, 1999 through March 31, 2000 due to claims processing system failures.
- l) As of March 30 and 31, TCCN conceded it had no formal quality assurance program, either internal to the claims operation or through an internal audit function.
- m) As of April 25, 2000 TCCN had no internal audit staff and has not submitted any cure plan to implement such an internal audit program prior to June 19, 2000.

6. On April 19, 2000, Acting Deputy Commissioner for the TennCare Division, Patricia L. Newton, issued a Notice of Defects in Claims Processing Operations, Notice of Defects in Financial Operations and Notice of Evidentiary Hearing. Said notices contained in a letter to Anthony J. Cebrun outlined the concerns raised by the examination reports, gave TCCN the opportunity to provide rebuttal to those reports, and requested TCCN be prepared to discuss eight (8) issues raised by those reports.

7. On April 24 and 25, 2000, representatives of MCMC and AHS on behalf of TCCN appeared before the Department of Commerce and Insurance and submitted its rebuttal to the aforementioned examination reports and submitted its Information Systems Service Recovery Cure Plan , Claims Operations Initiatives Plan, Provider Recontracting/Pricing Cure Plan, and Member Services Cure Plan (collectively referred to as the "Cure Plans"). These plans were submitted to the Department in response to the Department's request for corrective plans of action in light of the adverse findings and deficiencies noted in the aforementioned examination reports. In connection with the Cure Plans, in addition to its own plan actuaries on behalf of TCCN, MCMC has entered into contracts with professional consultants including

Pricewaterhouse Coopers, Robert E. Nolan Company, Capital Cities Corporation, and Ascendia Health Care Consulting to aid in the overhaul of TCCN and MCMC operations on behalf of TCCN. TCCN has informed the Department of Commerce and Insurance that the consultants have both daily conference calls to coordinate their activities, under the direction of Bob Osborne of Capital Cities Group, and other regular meetings at least twice weekly. The TCCN rebuttal, taken in light of the cure plans' detailed short and long term solutions to the concerns raised by the examination reports, acknowledges the need to correct the adverse findings contained in the examination reports.

8. While TCCN's cure plans seek to address adverse findings, it is clear and TCCN acknowledges that some procedural failures have been addressed and corrected; however many other procedural failures continue and may not be corrected in the near future.

9. According to the findings of the examination reports, TCCN has experienced significant claims processing errors since January 1, 2000 and these errors have in some measure continued. These errors have significantly impacted the operations of TCCN to the extent that the information systems are unable to provide reliable data for the accurate determination of TCCN's financial standing. This is further compounded by the finding that TCCN has, as of May 9, 2000, failed to complete bank reconciliations for the months of February, March and April 2000.

10. The State of Tennessee, Department of Finance and Administration has informed the Department of Commerce and Insurance that, in light of the regulatory concerns raised by the Commissioner's examiners and agents, it desires to make available certain safety net types of arrangements relating to payment of medical and pharmaceutical provider services claims against TCCN that require the powers herein.

CONCLUSIONS OF LAW

11. Tenn. Code Ann. Section 56-32-217 provides, in pertinent part, that the provisions of Title 56, Chapter 9 that are applicable to insurers are also applicable to health maintenance organizations.

12. Tenn. Code Ann. Section 56-9-503(a) provides that an insurer may be subject to administrative supervision by the Commissioner if, upon examination or at any other time, it appears in the Commissioner's discretion that:

- (1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds;
- (2) The insurer has exceeded its powers granted under its certificate of authority and applicable law;
- (3) The insurer has failed to comply with the applicable provisions of the insurance code;
- (4) The business of the insurer is being conducted fraudulently; or
- (5) The insurer gives its consent.

13. Department of Commerce and Insurance Rule 0780-1-66-.03 provides that the following standards, either singularly or a combination of two or more, may be considered by the Commissioner to determine whether the continued operation of any insurer might be deemed to be hazardous, financially or otherwise, to the policyholders, creditors or the general public. The Commissioner may consider, in addition to any other relevant factors, the following in pertinent part:

- (a) Adverse findings reported in financial condition and market conduct reports.

14. Based upon the foregoing findings of fact, the Commissioner hereby determines that the conditions set forth in Tenn. Code Ann. Section 56-9-503(a)(1) exist as to TCCN.

15. Tenn. Code Ann. Section 56-9-503(b) states, in pertinent part, that if the Commissioner determines that the conditions in 56-9-503(a) exist, the Commissioner shall:

- (1) Notify the insurer of the Commissioner's determination;
- (2) Furnish to the insurer a written list of the requirements to abate this determination; and
- (3) Notify the insurer that it is under the supervision of the Commissioner and that the Commissioner is applying and effectuating the provisions of part 5, Chapter 9, Title 56.

NOW THEREFORE, it is ORDERED by the Commissioner that TCCN be and is hereby placed under Administrative Supervision of the Commissioner pursuant to Tenn. Code Ann. §§ 56-9-501, *et. seq.* The Commissioner is applying and effectuating the provisions of Title 56, Chapter 9, Part 5. Pursuant to Tenn. Code Ann. §56-9-503(b), TCCN is hereby notified that TCCN has until September 30, 2000 to comply with the requirements of the Commissioner set forth as follows:

1. TCCN must be able to demonstrate to the Commissioner's satisfaction that TCCN has met its statutory minimum net worth requirements set out at Tenn. Code Ann. § 56-32-212 and will maintain said statutory minimum net worth;
2. TCCN must comply with the benchmarks and timetables as contained in the aforementioned Cure Plans as submitted to the Commissioner.
3. TCCN must demonstrate that its telephone customer service center is meeting industry minimums for call abandonment and caller hold times as outlined in the examination reports.
4. TCCN must demonstrate that it established an interim internal audit function no later than May 19, 2000, and said function operated for the duration of the supervision period.

The specific terms of this Administrative Supervision are as follows:

1. The Supervisor may contract, with the advice and written consent of the Commissioner of TDCI, with consultants, such as claims specialists, computer/information systems specialists, accountants, actuaries or other persons who the Supervisor deems necessary and able to aid in the supervision of TCCN.
2. The Officers, Managers, Directors, Trustees, Owners, Affiliates, Management

Company, Employees or Agents of TCCN, including Anthony J. Cebrun, Walter Richards, Joseph Barber, Rex Edmonds, Steve Reed, Marlene Reedy, Susan Short Jones, and any other persons or related parties with authority or control over or in charge of any segment of TCCN's affairs, will cooperate with the Commissioner and the Supervisor in the carrying out of the Supervision. This cooperation shall include, but shall not be limited to the following:

a. To reply promptly in writing (within 24 hours) to any inquiry from the Supervisor or the Commissioner's other agents requesting such a reply.

b. To make available to the Supervisor or the Commissioner's other agents any books, bank and investment accounts, documents, or other records --including any data residing on magnetic media or optical media -- or information or property of or pertaining to TCCN in its possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this supervision.

c. To respond promptly, fully and accurately to inquiries by the Supervisor or the Commissioner's other agents, examiners or consultants about operations or any other matters which the Supervisor or Commissioner deem important to this Supervision.

d. To provide direct access and participation in daily and weekly meetings and access to persons in charge. The Commissioner deems that adequate monitoring of the Cure Plans progress must include active participation by the Supervisor or the Supervisor's designee in the daily and weekly meetings referred to in the Findings of Fact ¶ 7.

e. To provide direct access to a written listing of and immediate access to all of the property, assets, and estate and all other property of every kind, wherever located belonging to TCCN, including, but not limited to, offices maintained by TCCN, rights of action, books, contracts, electronic data, papers, evidences of debt, bank accounts, savings account, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of TCCN, wherever situated, whether in the possession of TCCN or its officers, directors, trustees, employees, consultants, attorney, agents, affiliates or contractors.

f. To provide direct access to a written identification of the location of all the items set out in e. above.

g. To provide direct access to a written identification of and access to all TCCN bank account records, including canceled checks, for the last 3 years and during the period of supervision, including written explanation of any clearing/sweep accounts.

- h. To provide full cooperation of TCCN affiliates and officers, directors, agents, servants, employees and contractors during the period of supervision.
- i. To provide full access to and cooperation of any claims processing contractor facilities, information and staff and to provide to the Supervisor or supervisor designee complete access to TCCN facilities and contractor claims processing facilities.
- j. To provide direct access to a listing identifying all computer programs loaded on all TCCN computer equipment or systems, including a listing of all persons having access to each program and security programs and copies of operating manuals for each computer program.
- k. To provide direct access to a written listing of all contractors and vendors of TCCN, including vendor representatives and types of goods and services provided to TCCN, including the dollar amount paid to each in calendar years 1998, 1999 and 2000.
- l. To provide direct access to a written list of any creditors, contractors or vendors who receive preferential payment or other priorities.
- m. To provide direct access to written copies of all fiscal and accounting policies and procedures.
- n. To provide direct access to copies of correspondence to and from vendors for any delinquent accounts or notices of delinquency.
- o. To provide direct access to a chart of accounts for 1996, 1997, 1998, 1999 and 2000.
- p. To provide direct access to copies of closing documents detailing the proceeds obtained from the sale or divestiture of any TCCN assets during the past 3 years.
- q. To provide direct access to a schedule of the aging of accounts payable identified by vendor, subcontractor and provider -- at a minimum showing amounts past due 30, 60, 90 and over 90 days.
- r. To provide direct access to a written description of the methodology for all disbursements of funds, including wire transfers, other electronic banking transfers and cash. Please include an example copy of the pre-printed, sequentially numbered check stock used by TCCN and a written description of the security and controls for use of the check stock.
- s. Direct access to the copies, written schedules, descriptions, identifications and

listings described herein must be provided within 48 hours of written request by the Supervisor. In computing the 48 hours, Saturdays, Sundays and national holidays will not be included.

t. Effective for December 1999 and going forward for each month thereafter, TCCN until further notice shall submit monthly financial reports within 60 days of the conclusion of each month (including: analytical review, fluctuation review and utilization data) to TDCI TennCare Division. Such monthly reports shall include a quarterly report format jurat page.

u. Notwithstanding any provision herein to the contrary, the Department of Commerce and Insurance, and its duly authorized representatives shall have complete, immediate and unrestricted access to all aspects of the operations, documents and records of TCCN and MCMC.

("Any other persons or related parties" includes, but is not limited to, any person or entity who is an owner, shareholder, agent, employee, officer, board member of TCCN, Medical Care Management Company, USA, Medical Care Management Company, Access Health Systems, Inc., and American Healthcare Trust. "Affiliates" includes "affiliate" of or person "affiliated" with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.)

3. The Commissioner hereby appoints Courtney Pearre to carry out the terms of this Notice of Administrative Supervision as Supervisor. The Commissioner may designate a substitute Supervisor. The Commissioner, the Commissioner's deputies, employees or duly commissioned examiners will undertake an on-site review and monitoring of TCCN operations, including financial and claims processing operations.

4. It is not intended that issuance of this Notice of Administrative Supervision restricts the rights or ability of the Commissioner of TDCI to discuss matters related to the operations or oversight of TCCN or to release or discuss information or documentation that is required to be submitted to the Department of Commerce & Insurance by all health maintenance organizations operating in Tennessee, including, but not limited to, quarterly and annual financial filings, and

requests for material modifications of the Certificate of Authority.

5. It is not intended that issuance of this Notice of Administrative Supervision restricts the rights or ability of the Commissioners of TDCI, the Tennessee Department of Health or the Tennessee Department of Finance and Administration to release or discuss information or documentation that is required to be submitted to the Department of Health or the Department of Finance & Administration by all health maintenance organizations contracting with the State of Tennessee TennCare Program, including, but not limited to, reports and documents required to be filed with the TennCare Bureau.
6. The Commissioner of TDCI will, upon the effective date of this Notice of Administrative Supervision, provide a copy of this Notice and other appropriate documentation to the insurance departments of other states in accordance with Tenn. Code Ann. § 56-44-105, authorized representatives of the United States, representatives of the State Comptroller's Office, and the Speakers of the House and Senate of the Tennessee General Assembly.
7. The Commissioner may, upon the effective date of this Notice, provide other appropriate information and documentation to authorized representatives of the United States, representatives of the State Comptroller's Office, and the Speakers of the House and Senate of the Tennessee General Assembly.
8. During the period of supervision, the HMO may not make any disbursements or do any of the following things without the prior written approval of the Commissioner or the Commissioner's appointed Supervisor:
 - a. Dispose of, convey or encumber any of its assets or its business in force;
 - b. Withdraw any of its bank accounts;
 - c. Lend any of its funds;

- d. Invest any of its funds;
- e. Transfer any of its property;
- f. Incur any debt, obligation or liability;
- g. Merge or consolidate with another company;
- h. Approve new premiums or renew any policies;
- i. Enter into any new reinsurance contract or treaty;
- j. Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;
- k. Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;
- l. Make any material change in management; or
- m. Increase salaries and benefits of officers, or directors, or employees of persons or related parties; or, the preferential payment of bonuses, dividends or other payments deemed preferential.

9. Nothing in this Notice of Supervision shall preclude the Commissioner and TCCN from amending, rejecting or modifying this Notice of Administrative Supervision by written agreement. Furthermore, nothing in this Notice of Administrative Supervision shall prevent the Commissioner or other State authorities from instituting any other remedies available to them under law with respect to TCCN.

10. The Commissioner and/or Supervisor shall have the authority to exert any and all control TDCI deems necessary over the claims processing system operations, and any contracts

related thereto, and to assist TCCN and its management in the correction of the claims processing system operations and proper adjudication of claims.

11. Notwithstanding any provisions herein to the contrary, all terms and conditions contained herein shall be liberally construed to effectuate the regulatory purposes and objectives of the Department of Commerce and Insurance.

12. Notwithstanding any provisions herein to the contrary, the Department of Commerce and Insurance expressly and specifically retains its authority to take any regulatory action it deems appropriate, and in no way shall this order be construed to estop the Department or its officials from fulfilling their regulatory obligations.

13. TCCN and its management shall cooperate with TDCI and TDFA in the event that TDFA elects to construct or secure an alternative claims processing system. Any such claims processing system may be made available as a possible alternative or complement to TCCN's claims processing system.

14. TCCN and its Management Company shall cooperate with the Commissioner or the Commissioner's Supervisor in the implementation of this Supervision.

15. Action of the Commissioner applying and effectuating the provisions of Title 56, Chapter 9, Part 5 is subject to review pursuant to applicable state administrative procedures under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Tennessee Code Annotated.

16. If the Commissioner becomes aware of additional facts or circumstances which bear upon the transactions contemplated herein, the Commissioner reserves the authority to require such corrective action as it may deem necessary or advisable. As provided at T.C.A. § 4-5-320,

upon a determination by the Commissioner of TDCI that the public health, safety or welfare imperatively requires emergency action to summarily suspend the TCCN license, the Commissioner of TDCI shall provide TCCN written notice of such determination, setting out the reasons therefore.

17. The terms and conditions of this Notice of Administrative Supervision shall become effective immediately.

18. Pursuant to Tenn. Code Ann. § 56-9-503(d), if, after notice and hearing, it is determined that the conditions giving rise to the supervision still exist at the end of the supervision period specified herein, the Commissioner may extend such period.

SIGNED, this the 10 day of May, 2000.

Anne B Pope

ANNE B. POPE, Commissioner
Department of Commerce & Insurance,
State of Tennessee